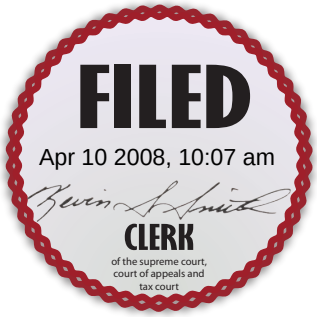

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IN THE COURT OF APPEALS OF INDIANA

ANTHONY RICHARDSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-0711-CR-626
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0606-FB-453

April 10, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Anthony Richardson appeals his conviction for Dealing in Cocaine,[1] a class B felony. Richardson contends that the trial court erroneously admitted evidence seized from a controlled drug buy because the State failed to establish the chain of custody. Finding no error, we affirm.

FACTS

On April 29 and May 3, 2006, Kokomo Police officers met with confidential informant Jay Darlin to arrange a controlled drug buy from Richardson. On both occasions, after Darlin set up the buy in a phone call to Richardson, the officers followed him to Richardson's apartment, where the drug buys took place. After the drug deals were finished, Darlin left the apartment, met the officers, and gave the cocaine to Detective Brad Reed.

Detective Reed immediately placed the drugs in a manila envelope and marked the envelope, later field testing the drugs at the Howard County Drug Task Force office. Detective Reed testified that the field weight of the drugs purchased on May 3, 2006—eventually admitted into evidence as Exhibit 4—was 1.8 grams. Tr. p. 199. After weighing the drugs, the detective sealed the envelope and then placed it in the Police Department's property system. Kokomo Police Department Property Custodian Lieutenant David Galloway testified that Exhibit 4 had been in the property system, sent to the lab, and then returned to the property room. Indiana State Police Forensic Scientist

[1] Ind. Code § 35-48-4-1(a).

Karen Bowen tested and weighed the drugs eventually admitted as Exhibit 4. Testing confirmed that the substance was cocaine and that it weighed 1.38 grams.

On June 9, 2006, the State charged Richardson with two counts of class B felony dealing in cocaine. During Richardson's trial, which began on August 24, 2007, Richardson objected to the admission of, among other things, Exhibit 4, arguing that the State had failed to establish the chain of custody of the drug evidence. The trial court overruled the objection and admitted the exhibit. On August 28, 2007, the jury found Richardson guilty of Count II, which was the May 3, 2006, drug buy, and a mistrial was declared as to Count I, which was the April 29, 2006, drug buy. The State later dismissed Count I. On September 26, 2007, the trial court imposed a fifteen-year executed sentence on Richardson, who now appeals.

DISCUSSION AND DECISION

Richardson's sole argument on appeal is that the trial court erroneously admitted Exhibit 4 into evidence.[2] The decision to admit or exclude evidence lies within the trial court's sound discretion and is afforded great deference on appeal. Bacher v. State, 686 N.E.2d 791, 793 (Ind. 1997).

Physical evidence is admissible "if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times." Culver v. State, 727 N.E.2d 1062, 1067 (Ind. 2000). In other words, the State must give "reasonable

[2] He also refers to Exhibit 3, which is the drug evidence seized from the April 29, 2006, drug buy. Inasmuch as the State dismissed Count I and Richardson was not convicted thereon, we will not consider the propriety of the trial court's decision to admit Exhibit 3 into evidence.

assurances that the property passed through various hands in an undisturbed condition." Id. Because the State need not establish a perfect chain of custody, slight gaps go to the weight, not the admissibility, of the evidence. Id. There is a presumption of regularity in the handling of exhibits by public officers. Murrell v. State, 747 N.E.2d 567, 572 (Ind. Ct. App. 2001). Thus, merely raising the possibility of tampering is insufficient to make a successful challenge to the chain of custody. Cockrell v. State, 743 N.E.2d 799, 809 (Ind. Ct. App. 2001).

Here, Darlin testified that he turned the drugs he purchased from Richardson over to Detective Reed immediately. Detective Reed testified about his handling of the drugs prior to placing them in the Kokomo Police Department's property system. The detective stated that he sealed the envelope before placing it in the property system. Lieutenant Galloway testified regarding the manner in which evidence is handled in the property system, including how items are labeled and stored, and stated that the property system does not accept unsealed evidence. Forensic scientist Bowen testified about the laboratory's receipt of the drug evidence, the procedures used while the evidence was in the laboratory's possession, and the release of the evidence back to the Police Department after testing was completed. Bowen testified that Exhibit 4 was in a sealed envelope when she received it and that she resealed the envelope after testing the drugs. Detective Reed testified that he removed the envelopes containing the drugs from the evidence room on the morning of trial and that they were in a sealed condition.

Richardson challenges the chain of custody of Exhibit 4 based on one fact—when Detective Reed field tested the drugs, he calculated that they weighed 1.8 grams, but

when Bowen weighed the cocaine in a laboratory setting, she found that it weighed 1.38 grams, a difference of approximately .5 grams. Given the presumption of regularity afforded to the handling of evidence, we do not find this fact to be sufficient to establish that tampering occurred. It may raise a possibility of tampering, but that is not enough. In all likelihood, Detective Reed simply made a mistake when he weighed the drugs during field testing. The discrepancy affects the weight of the evidence but not its admissibility, and inasmuch as the discrepancy was disclosed to the jury, the jurors were able to draw their own conclusions about possible tampering. Under these circumstances, we cannot find that the trial court abused its discretion in admitting Exhibit 4.[3]

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.

[3] And in any event, as the State points out, the error does not change the class of the offense, which is a B felony regardless of the amount of cocaine involved. I.C. § 35-48-4-1(a).